

**ENGINEERING AND ENVIRONMENTAL
TECHNICAL ASSISTANCE TO
SUPPORT THE ENERGY FACILITY PLANNING
AND LICENSING PROGRAM
RFQ Pre-Bid Conference
Questions and Answers**

March 3, 2003

Questions/answers are separated into three categories: Administrative, Technical, and Conflict of Interest.

Administrative Questions

Q-1: Will the list of participants at the pre-bid conferences be posted on the website?

A-1: Yes.

Q-2: Cost proposals – Are you taking cost proposals in this RFQ?

A-2: You do not submit a cost proposal with your SOQ. If you are the successful bidder, cost will be negotiated with you.

Q-3: Who is the current incumbent?

A-3: Aspen Environmental Group.

Q-4: How many subsequent subcontractors have been added?

A-4: About 65.

Q-5: On cost minimization, are your current prices for categories available?

A-5: No. The Commission did a market-place survey to obtain our cost rates, but those remain confidential.

CLARIFICATION: The market-place survey remains confidential until award of a contract, or the Commission decides not to go forward with the RFQ or contract.

Q-6: Since the Commission won't pay for out of state travel, if a prime contractor sets up a local office here, would those expenses be a part of the contract costs?

A-6: No, you make it part of your overhead. The Commission will not pay an out of state contractor to open up a local office.

Q-7: Are there any minimum requirements (in terms of annual income) for prime requirements?

A-7: No.

Q-8: After the notice of award, all proposals received are open for review, correct?

A-8: Yes. Do not put confidential information into the SOQ since it will be open for public review. If your document already has confidential information in it, black it out.

Q-9: Will the samples of work we submit be made available for public review?

A-9: Samples of work go into the SOQ. Samples of work are not open for public review so if there is confidential information in the samples, it remains confidential.

CLARIFICATION: No confidential information is allowed to be submitted in the SOQ. This includes work samples. The SOQ will be rejected if it contains confidential information. Bidders should not include confidential work samples. After the Notice of Selection is posted, all SOOs and related materials, including work samples, become public records.

Q-10: The order of things in the RFQ on pages 15 and 18 contradict one another.

A-10: The list on page 15 is intended to be a recap.

Q-11: What are the provisions for the subcontractors?

A-11: There are provisions in the RFQ to add subcontractors after the start of the contract as the need arises.

Q-12: Can the SOQ be rejected if the Prime has too few employees?

A-12: We don't want a company to say "one person can do it all." The prime contractor should have depth and a large pool to draw from for support in all areas.

Technical Questions

Q-13: Can we have more specificity on the types of reports you anticipate coming up?

A-13: You can see more examples on our website at www.energy.ca.gov under power plant licensing and electricity planning and natural gas planning.

Q-14: If you are using our models but we are not a part of a prime contract, would you still let contracts with individuals?

A-14: We will want the subcontractor to use the same planning models. Currently in Natural Gas we use the NARG gas model. Electricity uses the HESI model for price market planning, supply demand and reliability.

Q-15: Can you do individual contracts with a contractor for a specific area?

A-15: The winning contractor needs to be able to cover all areas outlined in the RFQ. We intend to use contractors selected through this competitive process and not initiate another solicitation soon.

Q-16: Do IOU's or Muni's affect things? Are they not affected by FCC, are they not building power plants?

A-16: SMUD is a muni that currently has a power plant application before CEC. The IOU's are not currently in the power plant construction business, but they are filing procurement plants with the CPUC in April.

Conflict of Interest

Q-17: What happens when a conflict of interest is found – does this mean immediate disqualification?

A-17: Any conflicts of interest should be found before the process is complete. If a company has a contract with a developer right now, the bidder will not even be considered.

Q-18: What about Path 15 in terms of conflict of interest?

A-18: Path 15 is going forward and is not an application before the CEC, therefore, there is not a COI issue with Path 15.

Q-19: Can a Prime contractor submit a proposal that includes a conflict of interest?

A-19: An eligibility conflict of interest for a Prime would disqualify that company from bidding. An availability conflict of interest would limit their usefulness to be assigned to projects.

Q-20: What you said in answering the question you just answered differs from what you answered in my question . Can you re-explain?

A-20: I should have clarified that the prime cannot have a conflict of interest, but a subcontractor could and be assigned to only work on the planning portion of the contract.

Q-21: Are you looking at traditional developers only (in terms of conflict of interest) when you make your check?

A-21: Developers that build and have power plants within California.

Q-22: If you have a siting team, and a planning team, how do you determine conflict of interest?

Clarification: The availability & eligibility conflict of interest rules apply only to the siting portion of the contract work.

A-22: The conflict of interest only applies to the siting portion of the contract.

Q-23: When a person leaves a company that has dealings with a developer, and moves to another company, does the conflict of interest move with him?

A-23: Once the employee leaves the company, the ties to the developer are severed, as long as there are no lingering financial ties.

Q-24: When does the clock stop on conflict of interest?

A-24: We'll have to ask legal, but generally the clock will stop when the financial ties are severed.

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Administrative Questions

Q-1: Is \$21 million available for this contract?

A-1: Answer: For 3 years we expect to have \$21 million available but right now we only have legislative authority through the annual budgeting process to spend \$6 million of that if the workload is there. If we need more we have to go back and get additional authority. If we don't need it, then it rolls over into the future years.

Q-2: Who is the incumbent on this contract?

A-2: Aspen Environmental Group.

Q-3: Why does this contract have no small business?

A-3: We have a strong commitment to the disabled veteran element of the contract. It's a requirement – we're looking for 3% commitment. Since this is a SOQ and costs are being negotiated, the Public Contract Code Regulations say we are not to use small business preference on RFQ's. We do use them, the Commission has a 25% goal in dollars, but they are not applicable to a RFQ.

CLARIFICATION: The Small Business Regulations do not apply to an RFO since cost bids are not submitted and evaluated.

Q-4: On working with the state, do we have to propose an office in Sacramento?

A-4: It's not a given. However, you might see a need to develop an office in Sacramento to better accomplish the contract. The contract is not going to pay for you to develop an office in Sacramento. If you want, you can build that into your cost proposal as part of your overhead, but that will raise your fully load hourly rate. It's your decision on whether or not you can make those staff available to us –

they don't need to be in Sacramento, but they have to be able to be there on short notice. For a lot of staff meetings and workshops we have a dial-in number and the consultant participates over the conference call.

Q-5: Can we use a receipt for actual posting an ad in a trade paper as proof?

A-5: As long as it is accompanied by a copy of the ad.

Q-6: The proposals are due April 1st. When will you notify those individuals who go to the interviews?

A-6: As soon as their names are available. The scoring committee has to have time to read through all the proposals. As much notice as possible will be given. The dates of this whole process were picked so we can get to a business meeting before the end of June.

Q-7: How is the selection panel appointed or selected?

A-7: The office managers who will be using the contract to support the work in their offices will be the panel. They are from the Electricity Office, the Natural Gas Office, the Engineering Office, the Environmental Office, and the Siting/Compliance Office.

Q-8: The company team organization that is mentioned that there was also an office across the street from the CEC. If I were to team up and did work for you, would that office be available?

A-8: The office across the street was for the purpose of dealing with the fifteen emergency peakers that came in over a period of weeks. As the workload has declined, the consultants were released and the remaining staff has been moved back to the main building. We generally do not provide office space for the consultants working on this contract. We do provide temporary offices for consultants who work full time on this contract and need to work under our close supervision. In this situation, we expect the contractor to charge us a lower hourly rate, since we are providing some of the overhead expenses.

Q-9: In concept, rather than have a team of people scattered all over the country, if I want to put a team of people in an office across the street, can I write that into the proposal?

A-9: You can declare that as your intent, but it would have to be funded out of the overhead that you're going to put into a cost proposal. Further, we are interested in having access to broad array of consultants, many of whom will work part time for the CEC.

Q-10: What kind of remote access is available? What does the Commission have for telecommuting?

A-10: The Commission primarily uses e-mail. The current contractor set up an FTP site that we can trade large documents and have a library for their staff and our staff to both share without the contractors having access to our Commission network.

Q-11: When the consulting staff integrates with CEC staff, do they have access to the network?

A-11: The consultant does have access if they are in the building. We generally don't plan on having consultants sitting in the building – only if there is a temporary need for it. Project managers have to sit in the building due to the nature of their work.

CLARIFICATION: The Contractor's Project Manager sits in CEC's building.

Q-12: What kind of response did you get last time you solicited for this RFQ?

A-12: We had five good applications.

Q-13: You are planning to propose (solicit) again so there must be work available?

A-13: We currently anticipate some work under this contract.

Q-14: What is the number of staff that the current contractor has?

A-14: One Prime contractor and 65 consulting groups. We do not know the current number of total staff available within these groups.

Q-15: Compliance tracking database; does this need to be re-designed?

A-15: The Commission had a contractor design an Access database to track compliance activities. This was put in there as an example, but may need to be updated.

Technical Questions

Q-16: On natural gas oversight, is that transmission pipelines? Underground storage fields?

A-16: Our regulatory oversight in the natural gas area extends only to those facilities that are appurtenant to a proposed thermal power plant we are licensing. In the

natural gas planning area, we do both short term and long term planning for the state's natural gas needs, including supplies and infrastructure.

Q-16: On siting trends, and LNG, can you expand on this? Are you talking about California usage?

A-16: It is a potential right now that needs to be researched. Recently there have been several projects proposed in California. There has been discussion of LNG because it's one way to get significant amounts of gas here in California.

Q-17: Do you do hydroelectric or nuclear work?

A-17: The Commission can license nuclear, but the law says that until there is a permanent disposal facility in California, you can't build a nuclear facility in California. The Commission does not have permitting authority for hydroelectric (or wind) but it is likely that we will examine hydro in the electricity planning and siting trends areas.

Q-18: Do you have a list of natural gas pipelines?

A-18: The Commission does not have permitting authority for gas lines or transmission lines. That would be under the planning aspect, not permitting. We only do transmission line permitting if it is connected to a current project.

CONFLICT OF INTEREST

Q-19: Is the Conflict of Interest associated with a company that currently has a contract with one of the developers or had a contract in the past? Where do you draw the line? What if we hire someone that had worked on an application in the past?

A-19: It's the "current" issue. In the RFQ there is a list of projects. The web page posts a list every month of which developers the Commission anticipates are going to be filing projects in the near future. There can't be a conflict with any of these developers. If there is an application in-house and you have a contract with them you would have a conflict and not be able to sign this contract. If the developer was planning to file and you have a current contract with them, that would also be a conflict of interest.

Q-20: Is the conflict of interest only for developers in California?

A-20: The COI extends to any developer with a license application before the California Energy Commission. If you work for that developer on any type of project

anywhere in the world, there is a conflict of interest. The COI is based on the financial ties to the developer.

Q-21: What if you are a step removed – a sub to the company that has the contract?

A-21: If there is still a financial connection between the sub and the company with the contract, there is a COI. The contract talks about subsidiaries and parent companies. If the connection is very limited, then we suggest you present the facts of your situation to our Legal Office for their review.

CLARIFICATION: The contract does not actually discuss subsidiaries and parent companies.

Q-22: What if a team member has a conflict of interest on the siting side but is being proposed to work only on the planning side?

A-22: Then there is no conflict of interest.

Q-23: If you had an individual that earlier worked for a company and they are no longer with that company, is that conflict of interest?

A-24: They do not have an eligibility conflict of interest. If they worked on the project that is filed with the Commission they couldn't be used on that specific project but can be used on other projects.

Q-25: I am a subcontractor to a Calpine project. Is there a conflict of interest? If I went to work for another company, would that be a conflict of interest?

A-25: As long as you work in some capacity for Calpine, you cannot work under this contract on the siting portion. If you change companies and no longer have any financial ties to Calpine, then the eligibility COI ends, but you have an availability limitation, depending upon your prior assignments.

Q-26: Does Southern California Edison have anything to do with this program?

A-26: We don't have any project with them right now and don't know of any. They are a parent to Mission Energy who also does not have a project currently before the Commission.

Q-27: My company did work under _____. We did sampling and testing. Would this be conflict of interest?

A-27: If you no longer have a contract with them, then there would be no conflict.

Q-28: With a relatively small pool, you realize there will be a lot of conflict of interest?

A-28: Yes, we understand many companies currently work for power plant developers with license applications before, or about to be before, the CEC. Those companies are not eligible to work on the siting portion of this contract, but are eligible to work on the planning side. Also, it's a big deal if the Prime has an availability conflict of interest, based on past work assignments. The fewer availability conflicts of interest you have, the more points you get in the scoring.

Q-29: Do you want a statement of potential conflict of Interest for the subs that are going to be working on the planning side? Do we list those?

A-29: It would be best to disclose it even though it's not going to be a disqualification, but we need to know.

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Questions faxed or called into the Commission's Contract Office

Administrative Questions

- Q-1: Should (or may) the bidders include legal services as part of the overall services offered to the Energy Commission staff in their RFQ responses?
- A-1: We are not allowed to include legal services in this RFQ.
- Q-2: Does the Commission expect the bidder to use the Commission's legal staff for such input or would the contractor provide its own legal counsel (as a subcontractor)?
- A-2: The Commission's legal staff provides advice and training to all the Commission siting staff and all its contractors in the siting program.
- Q-3: Does the reference to counsel suggest that bidders should include legal counsel experienced with the Commission certification process as part of their team? Or is the reference to counsel intended to refer to Commission in-house legal staff?
- A-3: The sentence "Prime Contractor will work with counsel to prepare testimony and legal briefs" "counsel" refers to the Energy Commission's Legal Office staff.
- Q-4: Section III of the RFQ (under mandatory order of presentation) describes Volume I as the Administrative & Technical Response and Volume II as the Technical Response. Should Volume I of the proposal be renamed Administrative Response?
- A-4: You are correct. This will be taken care of in an addendum.
- Q-5: Cost minimization is not included in the mandatory order of presentation for an SOQ. Should we describe cost minimization issues under "Prime Contractor's

Proposed Personnel & Resume” and “Team Members Qualifications” sections or should we add this as a section in the Mandatory order of presentation.

A-5: Yes, add a section for cost minimization.

Q-6:: Regarding the contract participation goal of 3% for disabled veteran business enterprises, is that 3% of subcontracted dollars, or 3% of the total dollars awarded to the prime contractor?

A-6: The 5% applies to the total amount of money spent on this contract, regardless of allocation between prime and subs.

Q-7: The first page of Section III specifies the mandatory order for the presentation of the SOQ. The detailed instructions for Volume 2, which begin on the third page of Section III, do not directly parallel the listed subsections on the first page of Section III. For example, the second topic in the detailed instructions “Team Relationship” is not shown in the list on page 1. Should bidders follow the detailed instructions for organizing sections, or follow the mandatory order listed on page 1 of section III and incorporate the additional information into the appropriate sections.

A-7: The mandatory list is the minimum the CEC needs to receive from bidders. The bidders are encouraged to provide additional information to support their bid, as long as they stay within the allotted time of the presentation.

Q-8: Regarding team member qualifications (page 5 of Section III): Is the Commission interested in the corporate qualifications of team firms within the last 48 months, or only in the personnel experience of the team firm staff proposed for the contract?

A-8: The CEC needs only to hear about the personnel that will be working on this contract.

Q-9: Under “Company/Team Organizations” the instructions state, “describe the organizational structure of the prime contractor team members, including an organization chart; provide the same for all firms and key members on the team.”” Are we correct to assume that the Commission desires a single organization chart for the prime contractor team that identifies each firm, its key members, and how the team is organized for this contract?

A-9: The CEC needs to see how the prime is organized and where all its employees are who are assigned to this contract. The CEC needs to see the same for each of the

subs. The CEC also needs to see how the prime and the subs will relate to each other.

Q-10: Under “References” the RFQ states that each bidder “shall complete a customer reference form, Attachment 4, for the prime contractor and all team member firms and key members of those firms”. Attachment 4 does not indicate that the references should be for individual members (personnel) of team firms, but does not indicate that at least four references are to be provided. Could the Commission clarify whether reference forms are to be completed for just the prime contractor and team firms or for individual key staff in those firms as well, and indicate how many reference forms are needed for each firm on the team?

A-10: The CEC needs four references for each company assigned to work on this contract. The bidder may also provide references for the key staff assigned to the contract.

Q-11: Under “Examples of Prior Work” the RFQ requests a minimum of one example in each area of prior work in the 23 technical descriptions in Exhibit C; can a single prior work example be used to demonstrate experience in multiple disciplines in the technical descriptions?

A-11: Yes

Q-12: Will the “prior work examples” used in the proposal be included or excluded as part of the public record after the contract is awarded? If they are to be included, can confidential information contained in the “prior work examples” be deleted or blacked out?

No confidential information is allowed to be submitted in the SOQ. This includes work samples. The SOQ will be rejected if it contains confidential information. Bidders should not include confidential work samples. After the Notice of Selection is posted, all SOQs and related materials, including work samples, become public records. If a work sample does contain confidential information, it should be deleted or blacked out before submitted to CEC.

Q-13 With respect to the “Examples of Prior Work” requirement of the RFQ and the sentence, “...a minimum of one example in each area of prior work in the technical descriptions provided as Exhibit C...” – does this mean that we are required to submit at least one example for biology, one for water resources, one for soils, and so on?

A-13: One example in siting and one example in planning is sufficient.

Q-14: If so, this would mean submitting at least 23 different work samples, which seems unusual for an SOQ effort. Can this mean, alternatively, that if we have one or two work samples which encompass all of the technical description areas, would those one or two examples fulfill CEC's work sample requirement?

A-14: Two examples are sufficient.

Q-15: In Section III on page 15 under How Many Copies of My SOQ Do I Submit? it states the 7 bound copies are to be Spiral-bound. Can we provide the copies in 3-ring binders? Volume 2 and the Volume of Work Product may not be conducive to spiral binding.

A-15: That is acceptable if the 3 ring binders are of similar size as the spiral binding.

Q-16: In Section III on page 15 under Required Format Volume 2 – the bullets do not fully agree with subsection for Volume 2 that starts on page 17. Which outline should be followed?

A-16: Follow the list that starts on page 17 of Section III.

Q-17: Do you require an estimate of resource availability and if so to what level? – Program manager, project manager, group manager, senior engineer/consultant, staff engineer/consultant?

A-17: Yes. We need an estimate of resource availability from all areas of expertise to meet our needs.

Q-18: In Section III on page 20 under Out of State Travel costs – This section reads as though only in-state travel will be reimbursed. Will the State reimburse the cost of travel (airfare and living) of engineers or consultants from offices outside of CA?

A-18: No. The Commission will not pay to bring someone from out of the state to a job site in California.

Q-19: Will the CEC reimburse the cost of travel (airfare and living) if an engineer or consultant is requested by the CEC to travel out of state on a CEC assignment?

A-19: Yes. The Commission will reimburse travel costs from California to another state if there is a need, and requested by the Commission.

Q-20: Is the training in CEC policies, procedures and practices referenced in the RFQ formal or on-the-job training?

A-20: The CEC will provide a formal training class for the winning bidder.

Q-21: If it's a combination, what percent is formal and how many days of formal training would a person typically receive?

A-21: We expect the training to cover 1-2 days initially, followed by individual or small group meetings with our lead technical staff.

Technical Questions

Q-22: What kind of software is preferred for noise modeling?

A-22: The Commission does not do noise modeling.

Q-23: How many noise staff does the Commission have in-house?

A-23: One

Q-24: Post Certification Compliance Monitoring Program – who is to maintain the monitoring program and for how long?

A-24: The CEC conducts a compliance monitoring program and is seeking assistance in the organizing the database that tracks all that activity.

Conflict of Interest Questions

Q:25: In Paragraph 4 of Exhibit E (Additional Provisions), the RFQ states that the contractor is to submit a completed Form 700, "Statement of Economic Interests". Is this form to be submitted as part of our proposal, or is this to be completed and submitted by the successful contractor upon award? If part of proposal, please direct as to where to obtain a copy of Form 700.

A-25: The Form 700 is to be completed by the winning bidder on an annual basis. The Contractor and its subcontractors will complete the Form 700 as directed by the Commission Contract Manager in consultation with the Commission Chief Counsel's Office.

The individuals with the primary ties to the CEC will submit the Form 700 to the CEC contract manager. The Form 700s for all other company employees and subcontractors working on this contract can be submitted to the company heads and a verification form can be submitted to the CEC. The Form 700 is available on-line at www.fppc.ca.gov.

Q-26: Could you please clarify the Eligibility rule 1 regarding conflicts? If a contract is to be completed, with a conflicted developer, by the time the CEC is scheduled to enter into contract discussion with the selected bidder, is this situation still considered a conflict? A follow on to this question would be , does a potential conflict arise at time of bidding or at time of contract award?

A-26: The conflict would occur once the bidder signs a contract with the Commission. If the bidder no longer has a contract with a conflicted developer, even if it is severed the day before and there are no lingering obligations, then no conflict of interest would exist for the siting portion.

Q-27: If selected, would we be precluded from working with any new developers applying for an AFC in California?

A-27: Yes. A Contractor cannot work for us and for a developer, or any of its agents, at the same time. A developer is considered to be the entity that is applying for a license (AFC or SPPE) for a thermal power plant from the CEC. Working for a developer includes time spent gathering information and preparing the application, helping to process the application at the CEC, and all post certification construction, operation, and compliance activities.

Q-28: If we had contracts with developers in the last 12 months, we would not be able to work on this project:

A-28: A contractor can work for us even if they had previously worked for a developer, as long as they no longer have a financial or contractual relationship with that developer. The contractor is eligible to work for us, but his previous work assignments will make him unavailable to work on certain projects for the CEC. In this case, the contractor will not be assigned to work on the same project he had worked on before, regardless of the elapsed time.

Q-29: I work for a very large company, which has multiple divisions. Each division does different work, some divisions work with developers and some do not. Can our energy services division (which does not work with developers) work on this project?

A-29: If your division and the other divisions report to the same company president, then we consider this to be the same company. Our legal office does not consider an internal “firewall” to be an appropriate separation. We look to the top of the company structure and the individual who controls financial compensation. If that person has control over both divisions, then we consider this one company, since the top person controls both operations.

Q-30: My inquiry is about the conflict of interest provisions for this RFQ. I believe that the previous CEC contract actions for these services, a conflict of interest existed if a proposing firm was working anywhere for any project applicant to the CEC. Is that the case on this contract?

A-30: The conflict of interest requirement for the RFQ, as it applies to siting case work, is the same as in the previous contract. You have stated the essence of the requirement correctly, that is, a contractor cannot work for the CEC at the same time it is working for a developer of a power plant project in the licensing process at the CEC, or about to file in the foreseeable future. This applies even if the contractor is working on a road project in a different state for developer x, if developer x has a power plant application with the CEC.

Q-31: Is the contractor and its subcontractors restricted from all future work for an energy facility developer for the life of the contract, or will the commission evaluate the nature of the work and consider granting consent to some work that is unrelated to this contract's scope?

A-31: The contractor cannot work for a developer in any capacity during the term of this contract. Once the contract is over, the contractor can work for a developer.

Q-32: Does the term "contractor" cover the company bidding on the procurement and all of its affiliated companies, or can one company or subsidiary within a larger corporation submit a proposal that addresses its conflicts of interest as a single entity?

A-32: The contractor refers to the company and all its parts that are financially linked and report ultimately to a common head (Chairman or President). Once the contract is awarded, a potential conflict of interest will depend on an individual's economic interests and the particular case in which the individual is being considered for assignment.

Q-33: How is conflict of interest to be handled for subcontracting with nonprofit firms that may receive funds from companies that are power plant developers in California (for example, nonprofit organizations that provide research or ecological services for such companies)?

A-33: Once the contract is awarded, potential conflicts will be handled on a case-by-case basis. For example, if a nonprofit firm is under subcontract, but the firm is not involved in making a governmental decision for the Commission, it will not be considered to have a conflict of interest or be ineligible to subcontract with the

Commission, even if it receives donations from companies that are power plant developers.

Q-34: In determining the weighting of conflict of interest for various bidders, will the Commission consider the type of work (unrelated to siting) and the associated revenue?

A-34: No and yes. A company's work not related to power plant siting with a developer will still disqualify the company from working with the CEC on this contract. For example, a bidder doing water quality monitoring for Calpine in the Geysers would not be eligible to work on this contract since Calpine has an active licensing case before the CEC.

Q-35: We have had past contracts with engineering consultants who were themselves under contract to energy companies, where we were working on a specific (geological) aspect of a power plant site. Is this a conflict of interest if the projects were not in the US?

A-35: If it is a contract from the past that is complete, then there is no conflict of interest. It would only be a conflict if the contracts were "current".

Q-36: What if the contracts have been completed and there is little prospect of additional work?

A-36: If it is a contract from the past that is complete, then there is no conflict of interest. It would only be a conflict if the contracts were "current".

Q-37: What if we were unaware of who our client's client even was due to an extremely strict confidentiality requirement in the contract they had?

A-37: The contract requires the winning bidder to continuously review new and upcoming projects in which members of the contractor and Commission may be involved for potential conflicts, and report any conflicts in progress reports. Therefore, the winning bidder has an affirmative responsibility to determine if conflicts exist and inform the Commission.

Q-38: If we no longer have an active contract on any potential power plant project, nor ever had any such project in the US, do we have any conflict?

A-38: If the contract is inactive, then there is no conflict of interest.

Q-39: Our company typically is not directly involved on behalf of developers in the process of obtaining siting approval from authorities such as the CEC. We also do not specifically track or monitor the status of efforts by the developers with whom we do business to obtain such licenses. It is nevertheless likely that some

of the developers with whom we do business are currently seeking, or are preparing to seek, licenses from the Commission. We recognize that this likelihood may raise issues regarding the CEC's conflict of interest requirements that bear upon our company's eligibility to contract with the CEC to assist with the siting review process. We believe there are ways to structure our project team and institute controls that will serve the intent underlying the CEC's conflict of interest rules, while enabling the CEC to draw on the expertise of companies like ours that have broad industry experience. Possible approaches could include the creation of independent affiliates that would be dedicated to working with the CEC and that would not contract with any developers, and the complete separation of our CEC project teams from any work that affiliated companies may be handling on behalf of developers. We would like the opportunity to submit a specific and detailed proposal for the CEC's consideration. Before we undertake that effort, however, we would appreciate some feedback regarding the extent to which the CEC is willing to work with companies like ours to craft appropriate solutions.

- A-39: The "creation" of independent affiliates by a company that has contracts with developers implies that that affiliate would be owned by the company and would be financially tied to that company. This would create a conflict of interest. Constructing firewalls between affiliates that still have strong, common financial ties is generally not acceptable. However, if you need further advice, you are encouraged to discuss the specific facts of your case with our Legal Office.
- Q-40: We are requesting clarification regarding Conflict of Interest, Rule #1 Eligibility, based on a recent corporate acquisition.

Background:

The parent company of our firm recently made an acquisition of another consulting firm. The parent company is publicly traded and essentially functions as a holding company for all the subsidiaries they own. This new acquisition is a wholly-owned subsidiary of our parent firm. The parent company's new acquisition has annual revenues from the power plant developer customers that represent about 0.5% of the total revenues of the parent company.

We are also a wholly owned subsidiary of a parent company. Our firm maintains financial, physical and managerial separation from the other subsidiaries. Each subsidiary maintains a separate Federal Tax ID number, a separate President, and separate financial and management systems. The Presidents of each subsidiary do report to the parent company President. Financial reporting for each subsidiary is aggregated for the corporate Annual Report of the parent company. A separate Board of Directors and President serve to manage the parent company. Each

subsidiary has and continues to operate independently of the others. The parent company stock is held by a combination of shareholders, including members of the public, parent company employees, and subsidiary employees.

Our company's proposal will not involve any qualifications or key personnel from the parent company's new acquisition.

Based on the above facts, does our company remain eligible to propose for this RFQ?

A-40: Yes, your company remains eligible to propose for this RFQ. Rule 1 on “eligibility” disqualifies a consultant “if they are currently employed by a developer (or any of its agents) who is currently seeking a license from the Commission for an energy facility, or by a developer (or any of its agents) that is preparing to seek a license from the Commission.” Based on the particular facts of your situation, even though your parent holding company recently acquired a consulting firm that has one or more power plant developers with cases before the Commission, your company does not thereby become employed by any of those developers. You describe a situation in which each wholly owned subsidiary remains independent of each other in terms of finances and management. Assuming the parent company, through its board of directors and president does not change the independent management of each subsidiary such that they, in effect, become parts of an integrated business managed and directed by the parent company, then your firm may be considered to have an identity, structure, and business relationship with clients that are separate and distinct from those of the newly acquired firm. To the extent business through the newly acquired firm could affect the finances of the parent company and thereby economic interests of your company and its employees, the effect is more speculative than not and, therefore, not a factor that would disqualify your proposal.